

## **CHAPTER 9 INDEFINITE DELIVERY CONTRACTS**

### **RELATED STATUTORY AUTHORITY**

SC Code § 11-35-3310 allows agencies to award indefinite delivery contracts for architectural-engineering and land surveying services pursuant to § 11-35-3220 and construction services pursuant to § 11-35-3020.

### **DEFINITIONS**

1. A Professional Indefinite Delivery Contract (IDC) is a contract whereby the professional agrees to provide the Agency professional services on an “as-needed” basis during the term of the contract. Agencies procure Professional IDC’s in the same manner as any professional service contract as set forth in Chapter 4 of this Manual. Part 1 below gives instructions for the use of indefinite delivery contracting for professional services.
2. A Construction IDC is a contract whereby the contractor agrees to provide the Agency construction services on an “as-needed” basis during the term of the contract. Agencies procure Construction IDC’s in the manner set forth in Part 2 below.
3. A Delivery Order is an order issued by an Agency for either a professional or a contractor to perform work under an IDC.

### **9.1: PROFESSIONAL SERVICES INDEFINITE DELIVERY CONTRACTING AND WORK ORDERS**

#### **9.1.1 PROFESSIONAL SERVICES INDEFINITE DELIVERY CONTRACTS**

##### **A. PROCURING PROFESSIONAL INDEFINITE DELIVERY CONTRACTS**

The agency procures professional services IDC’s in the manner as all professional services described in Chapter 4. Unless expressly modified by this section, the agency must follow the procedures set forth in Chapter 4 for soliciting professional services, selecting professionals, submitting documentation to OSE, obtaining OSE approvals, and contracting with professionals. However, The Agency may elect, by notification in the advertisement for professional services, to award IDC contracts to more than one person or firm under the same advertisement and interview process. In this event, the agency must assign an alpha/numeric identification to the project number so that each contract will have a unique contract number.

##### **B. CONTRACT TERMS**

The agency must prepare the contract to be used for its professional services IDC’s. However, the contract must include terms consistent with the requirements outlined herein.

###### **1. Required Time Term**

Professional service IDC’s must provide for termination of the contract within two years or less of the date of execution.

###### **2. Dispute Resolution Terms**

The IDC must provide for resolution of all disputes in accordance with the requirements of the South Carolina Consolidated Procurement Act.

###### **3. Insurance Terms**

The contract should include requirements for Errors & Omissions Insurance, Commercial General Liability Insurance, Automobile Insurance, and Workers Compensation Insurance.

##### **C. PROHIBITIONS**

1. The total Delivery Order amount for each small professional service IDC may not exceed \$25,000.

2. If the agency has or has had other contracts with a particular professional, the agency may not be able to contract with that professional using a small IDC. State Law prohibits entering into a small professional services contract if, as a result, the sum of all fees, excluding reimbursable expenses, paid to the professional in the previous 24 months will exceed \$75,000.
3. The total Delivery Order amount for each IDC may not exceed \$300,000 during the term of the contract.
4. Agencies may not use multiple IDC's or Delivery Orders to receive professional services normally procured as full scope professional services, unless both:
  - a. The agency has staff qualified to provide project management; and
  - b. The cumulative professional fees for the project do not exceed \$100,000.
5. The agency may not amend a contract to extend its termination date beyond 2 years from the date of execution.

#### **D. QUARTERLY REPORTS REQUIRED**

The Agency must submit to OSE quarterly reports on all its IDC contracts. These reports must include each IDC with the IDC Number. For each IDC, the agency must list every Delivery Order issued under that IDC. For each Delivery Order, the agency must provide:

1. The Delivery Order number (Note: this cannot be the IDC number);
2. A brief description of the work the professional performed and/or will perform;
3. The PIP or Non-PIP project number from which the agency pays the professionals fees; and
4. The total fees paid the professional.

If the agency submits a report that fails to include any of the required information, OSE will reject the report and return it to the agency for resubmission.

#### **9.1.2 DELIVERY ORDERS ASSIGNED TO THE IDC**

A Delivery Order for professional services is not subject to the limits of an agency's construction procurement certification and the agency may issue a Delivery Order without first obtaining OSE approval.

##### **A. REQUIRED TERMS**

In the Delivery Order, the agency must:

1. Define the scope of work;
2. Describe the services the professional will provide;
3. Provide a fee schedule for services the professional will provide; and
4. Describe the timeframe for completion of the work.

The Delivery Order may provide for either a lump sum payment to the professional or payment on an hourly basis with a "Not-to-Exceed" amount.

##### **B. AMENDMENTS TO DELIVERY ORDERS**

The parties may amend a Delivery Order provided the amendment does not cause the value of the Delivery Order or the IDC to exceed the statutory limits outlined in subsections 1.1C and 1.2C.

Either the agency or the professional may initiate a request for a revision of the Delivery Order. In either event, the A/E should prepare a cost and technical proposal for the amendment and submit it to the agency for approval. The cost proposal must be based on the hourly rates in the hourly fee schedule of the IDC, any fee schedule for incidental consultant services under the Delivery Order or amendment, and the estimated labor/hour breakdown for anticipated services under the amendment.

##### **C. PROHIBITIONS**

Total fees for small professional services IDC's may not exceed \$25,000 per Delivery Order per project.

Total fees for large professional services IDC's may not exceed \$100,000 per Delivery Order per project.

Fees paid to single IDC professional under an IDC may not exceed \$300,000 during the two year term of the IDC.

#### **D. WHEN THE DELIVERY ORDER WORK WILL NOT BE DONE UNTIL AFTER THE IDC TERMINATION DATE**

Work on individual projects started within the two-year IDC contract period may continue past the time limit to bring the work to an expeditious completion. In such event, the agency must notify the OSE, in advance, of the need to start a project within the two-year period that it expects to continue past the time limit.

### **9.2 INDEFINITE DELIVERY CONTRACTING FOR CONSTRUCTION SERVICES**

#### **9.2.1 GENERAL**

##### **A. PROCURING INDEFINITE DELIVERY CONTRACTS FOR CONSTRUCTION**

Agencies need to obtain an IDC project number from OSE prior to soliciting bids. To obtain an IDC project number, contact OSE at (803) 737-0772. OSE will assign an IDC number with the prefix "D" following the Agency number, e.g., J16-D027.

The Office of State Engineer (OSE) must authorize award of all Indefinite Delivery contracts for construction regardless of the agency's construction certification.

##### **B. BUILDING CODE COMPLIANCE.**

Unless the work performed under a delivery order is within the Agency's Code Certification granted by OSE, all work to be performed under a delivery order must be reviewed and approved by OSE for compliance with applicable building codes before the delivery order is issued. Applicable codes are set forth in Chapter 5 Part 5.1.

#### **9.2.2 LIMITS OF INDEFINITE DELIVERY CONSTRUCTION CONTRACTS**

##### **A. DOLLAR LIMITS**

The maximum amount of a single Delivery Order plus all amendments may not exceed \$150,000. The Agency may not issue multiple delivery orders to a single IDC contractor for a single project to avoid this limitation.

The total amount of all Delivery Orders (including amendments) issued under a single IDC may not exceed \$750,000.

The total cost of a single project performed using a single or multiple IDC contractors may not exceed \$150,000. The Agency may not divide a single project into multiple projects to avoid this limitation.

##### **B. DURATION**

An IDC must provide for termination of the contract within two years or less of the date of execution. Work on individual projects started within the two-year IDC period may continue past the time limit to bring the work to an expeditious completion. However, the Agency must notify OSE in advance of the need to start a project within the two-year period that it expects to continue past the time limit.

#### **9.2.3 BID AND AWARD OF CONSTRUCTION IDC**

The bidding documents must accurately describe the method the Agency plans to use to arrive at a Base Bid. The Agency may use one of three methods for bidding IDC's:

##### **A. LOW BID**

Under this method, the Agency uses an actual project to solicit bids. The Agency will award the project and an IDC to the lowest responsive and responsible bidder. The Agency may also award an IDC to other bidder's starting with the second low bidder, then the third low bidder and so forth. The Agency should contract with minimum of three contractors for each category of work (general construction, mechanical, etc.) for which it intends to issue delivery orders. When the Agency wants to issue a delivery order, it must

seek quotes from three or more IDC contractors and award the delivery order to the contractor submitting the lowest quote.

## **B. COST GUIDE AND MULTIPLIER**

Under this method, the Agency selects a published cost data guide similar to R. S. Means Cost Data series as a basis for determining the price of delivery orders. The Agency will solicit proposals from bidders for a multiplier the bidder will apply to the cost in the cost data guide for determining the cost of its work. The typical Base Bid will be a decimal number. A multiplier of 1.00 will reflect the same unit prices as shown in the cost data guide. A multiplier of 0.75 will reflect a price 25% lower than the unit prices listed in the cost data guide. The Agency will award an IDC to the bidder with the lowest multiplier and may award additional IDC's to other bidders going in order from lowest to highest.

Unless the IDC contractor proposes to provide work at a lower price, the Agency must use the IDC contractor's multiplier and the cost data guide to price delivery orders assigned under their contract. The bidding documents should clearly explain that the unit prices in the cost data guide include all overhead, delivery, setup, installation, and profit. The contractor may not add any additional mark-up to its price. If the contractor chooses to subcontract some or all of the work, the contractor must still use its multiplier with the cost data guide for pricing the subcontracted work. However, if the subcontracted work is outside the contractor's license, the contractor may include a markup of 13% on the price of the subcontracted work. If the contractor proposes not to use its multiplier and the cost data guide as the basis for the price of its work or subcontracted work, it must document that the proposed price is lower than the price would be if the contractor used the multiplier and cost data guide. The Agency must include this documentation in its file.

If an agency proposes to issue a delivery order when more than 20% of the work is not covered by the cost data guide, the agency must solicit competitive quotes on the work from multiple IDC contractors.

## **C. UNIT PRICES**

Under this method, the Agency develops a comprehensive list of unit prices it will use in the bidding documents. The bid form lists estimated quantities and a description of each unit of work the bidders are to price. The Agency must provide appropriate quantities for each unit of work that will reflect the estimated amount of work a contractor will perform under a typical delivery order. The bidders must supply the unit price and multiply it times the number of units listed to arrive at an extended price. The total of all extended prices becomes the bidder's base bid.

The Agency may develop the bid package using an actual or hypothetical project with a complete take-off of work to be included for unit pricing. The Agency should include in the bid package a basis for adjusting the unit price should the actual quantity purchased vary substantially from the projected quantity.

Using the unit prices bid, pricing for Delivery Orders and Subcontracted work must be handled in the same manner as in B.

If an agency proposes to issue a delivery order when more than 20% of the work is not covered by the unit prices, the agency must solicit competitive quotes on the work from multiple IDC contractors.

## **D. BID SECURITY**

Regardless of the method the Agency chooses to use for bidding IDC's, the contract documents must require bid security in the amount of \$7,500.00 at the time of bidding.

### **9.2.4 CONTRACTORS' LICENSING**

A contractor bidding on IDC projects must be licensed as required by the Contractor's Licensing Board for the discipline of work covered by the solicitation and the license must allow the bidder to perform work valued at \$150,000. An Agency may not use an IDC contractor to broker work that is not covered by the contractor's license.

### **9.2.5 CONTRACT AWARD**

At the successful conclusion of the sealed bidding process for the IDC, the Agency must post a Notice of Intent to Award (SE-370) for each contractor it has selected. The Agency must submit each contract, signed

only by the contractor, along with supporting documentation with a Request for Authority to Execute a Construction Contract (SE-380) to OSE for approval. See Chapter 6 for procedures in awarding a contract.

## **9.2.6 AWARDING DELIVERY ORDERS**

### **A. LOW BID**

If the Agency has awarded IDC's using the low bid method, it must solicit competitive quotations from at least three IDC contractors for the work required by a delivery order. If one or more IDC contractors decline to provide a quote, the Agency must document that fact. The Agency must award the delivery order to the contractor providing the lowest quote using a Construction Services Delivery Order form (SE-680).

On the Delivery Order (SE-680), the 'PROJECT NUMBER' will either be the PIP number of the project for which the Work is to be completed, or the IDC number with a 'phase' suffix e.g., J16-D027-A. The agency must establish delivery order numbers assigned to the contract for its record keeping purposes.

The Agency must be cautious to assure that it has at least three contracts with active IDC's. If the Agency only awarded three IDC's originally and it has already awarded one of the original contractors \$750,000 in delivery orders, the Agency should solicit additional IDC contractors as outlined above.

### **B. COST GUIDE AND MULTIPLIER OR UNIT PRICES**

#### **1. SINGLE IDC CONTRACTOR**

If the agency has awarded an IDC to a single contractor, it may award delivery orders to that contractor using the pricing method specified in the IDC. However, if the contractor proposes to provide the work at a price less than that calculated under the method prescribed in the IDC, the Agency may use the lower price if it includes in the file written documentation that the price is indeed lower.

#### **2. MULTIPLE IDC CONTRACTORS**

If the agency has awarded multiple contracts, it should use a method of providing each contractor a fair opportunity to receive delivery orders under the IDC. Time permitting; the Agency may consider the use of competitive bidding among the various IDC contractors for an individual Delivery Order. If competitive bidding is not used, the price of a delivery order must be determined in the manner set forth in B1 above.

#### **3. DELIVERY ORDER FORM**

The Agency may award a delivery order using a Construction Services Delivery Order form (SE-680). On the Delivery Order, the 'PROJECT NUMBER' will either be the PIP number of the project for which the Work is to be completed, or the IDC number with a 'phase' suffix e.g., J16-D027-A. The agency must establish delivery order numbers assigned to the contract for its record keeping purposes.

The Agency should amend delivery orders using Form SE-690. The Agency shall price any amendment in the same manner as the price for the original delivery order unless the parties based the original delivery order price on competitive quotes. In the case were the parties based the original delivery order price on competitive quotes, the Agency must use the method prescribed in the IDC for pricing delivery orders.

## **9.2.7 PERFORMANCE AND PAYMENT BONDS**

The Agency must obtain Performance Bonds and Labor & Material Payment Bonds in the amount of 100% of the Delivery Order amount for all Delivery Orders exceeding \$50,000. The Agency may require bonds on Delivery Orders under \$50,000.

## **9.2.8 QUARTERLY REPORTS**

The Agency must submit to OSE quarterly reports on IDC contracts. Each report must contain the following:

1. IDC project number;
2. Delivery Order number for each Delivery Order issued under the IDC;
3. Brief description of work for each Delivery Order;
4. Date of OSE Building Code approval for each Delivery Order;

5. Flood Plain Community Number and Panel Number each Delivery Order;
6. Date of Flood Hazard Area Permit if applicable for each Delivery Order;
7. If Agency pays delivery order fees out of a PIP, the PIP project number from which fees are paid;
8. If Agency does not pay delivery order fees out of a PIP, a statement to that effect;
9. Total fees paid per Delivery Order.